

STATE TAX COMMISSION

of

for redetermination of deficiency of license fee under Section 181 of Article 9 of the tax law based on the period January 1, 1968 to October 25, 1968.

(2) The taxpayer is engaged in leasing cargo containers which are used to ship merchandise by ship, rail or truck. The general executive, accounting and billing offices are located in New York. Two salesmen work out of the New York office. Sales offices are maintained by the taxpayer in San Francisco, California; Chicago, Illinois; London, England,

and Hamburg, Germany. Sales are solicited on behalf of the taxpayer by subsidiary corporations in Ghent, Belgium; Rotterdam, The Netherlands, and Milan, Italy. A storage depot is maintained in Wilmington, California, and a storage and repair depot is maintained in Secaucus, New Jersey.

(3) The statutory business allocation for the period January 1, 1968 through October 25, 1968 was computed as follows:

Property	3.6%
Receipts	2.0%
Wages	<u>58.3%</u>
Total	63.9%
Business allocation (+3)	21.3%

(4) The wage allocation is substantially larger than the two other factors because the general executive, accounting and billing offices are located in New York.

(5) On October 15, 1969, the Department of Taxation and Finance issued notice of deficiency of license fee based on the period January 1, 1968 to October 25, 1968, as follows:

Shares of no par value stock issued	2,000,000
License fee allocation	19.597%
Shares of no par value stock allocated to New York	391,940
License fee at \$.06 per share allocated to New York	\$23,516.40
License fee paid in previous years	10.00
Additional license fee due	\$23,506.40

The license fee allocation was computed by dividing the sum of taxpayer's business, investment and subsidiary capital allocated to New York on its franchise tax report under Article 9-A for the period January 1, 1968 to October 25, 1968, by total capital for such period, as follows:

	<u>Amount</u>	<u>New York Allocation</u>	<u>Amount Allocated to New York</u>
Business capital	\$11,799,093	21.3%	\$2,513,206
Investment capital	637,500	0.387%	2,467
Subsidiary capital	<u>399,926</u>	0.0%	<u>-0-</u>
Total	\$12,836,519		\$2,515,673
License fee allocation			19.597%

(6) On January 5, 1970 a timely petition for redetermination of the license fee only was filed requesting an equitable adjustment principally with respect to use of the wage factor in the allocation of business capital.

(7) Section 181 of Article 9 of the tax law reads, in part:

"Every foreign corporation * * * doing business in this state * * * shall pay a license fee of * * * six cents on each share of its capital stock without par value employed within this state for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state."

"The measure of the amount of capital employed in this state shall be * * * except that the amount of capital stock employed in this state by a corporation subject to tax under article nine-a of this chapter shall be that proportion of its capital stock which is equal to the proportion of its business, investment and subsidiary capital allocable within the state pursuant to the provisions of said article * * *."

Based upon the foregoing findings and all the evidence presented, the State Tax Commission hereby

DECIDES:

(A) The license fee allocation percentage measuring the amount of capital stock employed in New York by a corporation taxable under Article 9-A must, pursuant to (7) above, be based on the proportion of its business, investment and subsidiary capital allocable to this state pursuant to the provisions of Article 9-A.

(B) The license fee of \$23,516.40 was computed in accordance with the provisions of Section 181 based on a report filed by the taxpayer for the period January 1, 1968 to October 25, 1968.

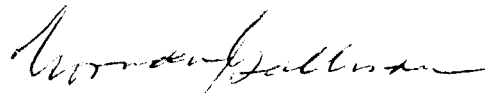
(C) Section 181 of Article 9 of the tax law does not specifically provide any basis for an equitable adjustment

of a license fee. Any adjustment of the license fee apportionment would have to be based on a modification of the statutory apportionment formula under Article 9-A of the tax law. The taxpayer has accepted the Article 9-A apportionment for the period on which the license fee was based, and in view of the nature and extent of its activities in New York there is no reasonable basis on which to conclude that the statutory formula produces an improper result either for the franchise tax or the license fee. The substantial license fee is due primarily to the large number of shares of no par value stock issued, not to an inequitable apportionment formula.

(D) That the notice of deficiency of license fee is affirmed together with such interest as may lawfully be due under Section 1084 of the tax law.

Dated: Albany, New York
this 7th day of July 1971.

STATE TAX COMMISSION


President


Commissioner


Commissioner